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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

IN RE: RUDY MALOY

CASE NO.: FEC 04-202

ORDER OF NO PROBABLE CAUSE

THIS CAUSE came on to be heard by the Florida Elections Commission at its regularly scheduled meeting held on May 19 & 20, 2005, in Tallahassee, Florida.

Based on the complaint, report of investigation, statement of findings submitted by the staff, written statements submitted by the Respondent, and any oral statements made at the probable cause hearing, the Commission finds that there is **no probable cause** to charge the Respondent with the following violations:

Section 104.31(1)(a), Florida Statutes, prohibiting an officer or employee of the state, a county, or a municipality from using his official authority or influence for the purpose of interfering with an election, interfering with a nomination for office, coercing or influencing another person's vote, or affecting the results of an election; and

Section 106.15(3), Florida Statutes, prohibiting a candidate from using the services of any county officer or employee during working hours for furthering his candidacy for nomination or election to public office; and

Section 106.15(4), Florida Statutes, prohibiting a person from making, soliciting, or knowingly accepting any political contribution in a building owned by a governmental entity.

Therefore, it is **ORDERED** that this case is **DISMISSED**.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on June 3, 2005, in Tallahassee, Florida.

Chance Irvine

Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Copies furnished to:

Eric Lipman, Asst. Attorney General
Mark Herron, Attorney for Respondent
Rudy Maloy, Respondent
Eugene Danaher, Complainant
Leon County Supervisor of Elections, Filing Officer

Attachment: Statement of Findings

**FLORIDA ELECTIONS COMMISSION
STATEMENT OF FINDINGS
CASE NUMBER: FEC 04-202**

RESPONDENT: Rudy Maloy

COMPLAINANT: Eugene Danaher

On June 22, 2004, the Florida Elections Commission received a sworn complaint alleging that the Respondent violated Chapter 106, Florida Statutes. The Commission staff investigated the allegations and based on the facts and conclusions of law contained in the Complaint, the Report of Investigation, and this statement, the staff recommends that there is **no probable cause**¹ to charge Respondent with violating:

Section 104.31(1)(a), Florida Statutes, prohibiting an officer or employee of the state, a county, or a municipality from using his official authority or influence for the purpose of interfering with an election, interfering with a nomination for office, coercing or influencing another person's vote, or affecting the results of an election; and

Section 106.15(3), Florida Statutes, prohibiting a candidate from using the services of any county officer or employee during working hours for furthering his candidacy for nomination or election to public office; and

Section 106.15(4), Florida Statutes, prohibiting a person from making, soliciting, or knowingly accepting any political contribution in a building owned by a governmental entity.

SUMMARY OF FACTS AND CONCLUSIONS OF LAW.

1. Respondent is a former Leon County Commissioner. Respondent was defeated in his bid for reelection for a fourth term in the August 31, 2004 primary election.
2. Complainant is a politically active resident of Leon County, Florida.
3. Gwendolyn Simmonds was employed by the Leon County Board of County Commissioners (LCBCC) as Respondent's administrative aide from March 17, 2004 to March

¹ The term probable cause means a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has committed the offense charged. Schmitt v. State, 590 So.2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. Department of Highway Safety and Motor Vehicles v. Favino, 667 So.2d 305, 309 (Fla. 1st DCA 1995).

25, 2004, at which time she requested a transfer. Ms. Simmonds' employment with the county ended in November 2004.

I. Sections 104.31(1)(a) and 106.15(3), Florida Statutes.

4. Investigator O'Brien investigated whether Respondent violated Section 104.31(1)(a), Florida Statutes, by using his official authority to influence or coerce another person's vote or affect the results of an election. Investigator O'Brien also examined whether Respondent violated Section 106.15(3), Florida Statutes, by using the services of a county employee during working hours to work on his reelection campaign.

5. Complainant alleged that Respondent, while acting in his capacity as a Leon County Commissioner, directed Ms. Simmonds, who was his administrative aide, to work on his reelection campaign during business hours.

6. On May 25, 2004, Ms. Simmonds asked to meet with Parwez Alam, the Leon County Administrator. Ms. Simmonds requested a transfer to a different work assignment because she no longer felt comfortable working with Respondent. Ms. Simmonds reported to Mr. Alam that Respondent directed her to work on his campaign and that Respondent told her she needed to get 20,000 votes if she wanted to continue to earn her salary.

7. The Chairman of the LCBCC, the County Attorney, and the Director of Human Relations were informed of the meeting and the details of Ms. Simmonds' allegations. Leon County engaged the law firm of Coffinan, Coleman, Andrews and Grogan, P.A. (Law Firm) to conduct an independent investigation (Investigation) into the "allegations of workplace harassment made by Gwendolyn Simmonds, Aide to Commissioner Rudy Maloy."² The results of the final investigation were given to the LCBCC on June 4, 2004.

8. The Law Firm interviewed Ms. Simmonds as part of its Investigation. During the interview, Ms. Simmonds claimed that prior to her employment, she told Respondent that she would not work on his reelection campaign. Ms. Simmonds also alleged that shortly after she began working for Respondent, he began to pressure Simmonds to work on his campaign.

9. Ms. Simmonds also stated that Respondent told her to perform her administrative duties for about two hours each day and then campaign for Respondent. Respondent did not give her any work to do other than campaign related assignments. Ms. Simmonds felt on-going pressure to work on Respondent's campaign, which made her uncomfortable.

10. The Commission issued a Subpoena for Deposition to Ms. Simmonds for October 19, 2004. Ms. Simmonds was served with a copy of the subpoena, but failed to appear as required. The staff filed a lawsuit in Leon County Circuit Court to enforce the Commission's subpoena. Thereafter, Ms. Simmonds was served with the Court's order requiring her to appear for her deposition on November 16, 2004.

² May 25, 2004 letter from Leon County Attorney to Michael Grogan, Esq.

11. Ms. Simmonds' deposition testimony was inconsistent with other statements she made. Ms. Simmonds testified Respondent interviewed her with no one else present (on March 5, 2004). After leaving the job interview, Ms. Simmonds understood she would be required to do campaign work for Respondent if offered the position. Four days thereafter, Ms. Simmonds accepted Respondent's offer of employment.

12. Ms. Simmonds stated that a few days after accepting the position, she volunteered to collect petition cards for Respondent's campaign. After her official March 17, 2004 starting date, 95 to 99% of Ms. Simmonds' work assignments were campaign related.

13. Ms. Simmonds also testified that she faxed campaign press releases to major radio stations, statewide media outlets, and three local college campus newspapers. Although Ms. Simmonds stated she kept in regular contact with the local college newspapers, she could not recall names of individuals with whom she regularly spoke and coordinated campaign events. Ms. Simmonds stated that she used the media contact phone numbers she obtained while working for Representative Curtis Richardson.

14. Ms. Simmonds added that Respondent wanted her to make campaign related telephone calls from county offices. Respondent also asked her to solicit campaign contributions from Gary Yoder, Sean Pitman and Attorney Henry Hunter, which she never did.

15. Ms. Simmonds also testified that she requested to go to three local college campuses to organize student groups, explain Respondent's platform, work on getting out the vote and otherwise campaign on Respondent's behalf.

16. Respondent denied hiring Ms. Simmonds to work on his campaign during business hours when the Law Firm interviewed him. Respondent also denied Ms. Simmonds' claim that she told Respondent she would not do campaign work for him at her interview. Respondent stated he never instructed Ms. Simmonds to work on campaign related activities after completing two hours of county work because there was a county policy against conducting political activities during work hours. Respondent stated he informed Simmonds about the policy. Respondent also denied Ms. Simmonds' allegation that she was not provided with any county work assignments.

17. Kenneth Barber, Respondent's administrative aide prior to Ms. Simmonds, told the Law Firm that he had a telephone conversation with Ms. Simmonds prior to her job interview and specifically informed her that Commissioner Maloy needed someone to help him with the campaign. Mr. Barber also stated that he was present during the interview with Respondent and Ms. Simmonds never stated she would not do campaign work for Respondent. Mr. Barber noted that the primary reason he recommended Ms. Simmonds for the job was because of her campaigning skills.

18. Investigator O'Brien interviewed Mr. Barber via telephone. Mr. Barber confirmed that he was present at Ms. Simmonds' interview with Respondent. Mr. Barber did not remember Respondent asking Ms. Simmonds to do campaign work as part of her employment duties. Mr. Barber added that Respondent made it clear that he was up for reelection, the

administrative aide job was an appointed position, and if he was not reelected, the new commissioner would select his own administrative aide.

19. Mr. Barber also said that after Ms. Simmonds began working for Respondent, Mr. Barber went by Respondent's office several times for approximately an hour. Mr. Barber assisted Ms. Simmonds with some tasks and answered any questions she had. Mr. Barber stated that Ms. Simmonds neither said anything about performing campaign work for Respondent nor about being unhappy in her position.

20. Investigator O'Brien interviewed other Leon County Commissioner's administrative aides during his investigation. Each of the aides contacted who knew Ms. Simmonds' gave a similar story. Ms. Simmonds would approach the aide, complain about having to work on campaign related duties, and complain about not receiving county commission related assignments. No one interviewed by the Law Firm or by Investigator O'Brien personally witnessed Simmonds working on Respondent's campaign during regular working hours.

21. This is a classic case where lack of witness credibility makes it impossible to determine the true facts. Except for Respondent and Ms. Simmonds, there are no third party witnesses with personal knowledge about the events. The witnesses Investigator O'Brien interviewed all reported that Ms. Simmonds was the source of their information. More importantly, Ms. Simmonds' significant memory lapses during her deposition prevented her from recalling the names of people with whom she had contact or the name of anyone who could independently corroborate her version of events. Therefore, it is unlikely that staff could prove this case at a contested hearing.

22. Under these circumstances, I recommend the Commission find no probable cause that Respondent violated Section 104.31(1)(a), Florida Statutes. I further recommend that the Commission find no probable cause that Respondent violated Section 106.15(3), Florida Statutes.

II. Section 106.15(4), Florida Statutes.

23. Investigator O'Brien investigated whether Respondent violated Section 106.15(4), Florida Statutes, by knowingly accepting a contribution from Ms. Simmonds, his administrative aide in the Leon County Courthouse.

24. Ms. Simmonds told the Law Firm that she wrote Commissioner Maloy a check for \$500 to support his campaign out of gratitude for her job. Ms. Simmonds stated that Commissioner Maloy returned the contribution check to her approximately one-month later.

25. Investigator O'Brien interviewed, Kate Brady, the administrative aide for Leon County Commissioner Bob Rackleff. Ms. Brady told Investigator O'Brien that she had a 15 minute conversation with Ms. Simmonds at an event they both attended. During the conversation, Ms. Simmonds stated she had made a \$500 contribution to Respondent's campaign after Respondent solicited the contribution from her. Ms. Simmonds claimed she felt obligated to make it.

26. Ms. Simmonds testified at her deposition that she wrote Respondent a \$500 contribution check while in the Leon County Courthouse. After giving Respondent the contribution check, Ms. Simmonds began to have second thoughts about it, made up a story that her mother needed the money immediately, and asked Respondent not to deposit the contribution check. Ms. Simmonds also testified that Respondent never directly asked her to contribute.

27. Ms. Simmonds added that over the next three to four weeks, Respondent asked if Ms. Simmond's mother had re-paid the money to her. Ms. Simmonds testified she told Respondent that her mother needed the money to landscape her house because it looked so bad. After approximately one month Respondent returned the check. Ms. Simmonds did not keep the check or keep any records or notes about the occurrence of these events.

28. Respondent denies accepting a \$500 check from Ms. Simmonds. During his March 31, 2004 sworn statement to Mr. Malone, Respondent testified that Ms. Simmonds attempted to give him a \$500 contribution check while in the county commission offices at the Leon County Courthouse. Respondent testified he took the check, examined it, and returned it to Ms. Simmonds. The Law Firm's report stated that Ms. Simmonds had given Respondent a \$500 check for his campaign, but Respondent returned Simmond's check to her that same day.

29. Because the witness lacks credibility, it is not possible to determine what actually happened regarding Ms. Simmonds' contribution check.

30. Under these circumstances, I recommend that the Commission find no probable cause that Respondent violated Section 106.15(4), Florida Statutes.

Respectfully submitted on May 4, 2005,



Eric M. Lipman
Assistant General Counsel

Copy furnished to:

Barbara M. Linthicum, Executive Director
Mark O'Brien, Investigator Specialist